

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

KD and JD, PARENTS, NATURAL
GUARDIANS and NEXT FRIENDS of LD,

DOC. 8:17-CV-00285

Plaintiffs,

v.

DOUGLAS COUNTY PUBLIC SCHOOL
DISTRICT NO. 001, a/k/a OMAHA
PUBLIC SCHOOLS;

**DEFENDANT OMAHA PUBLIC
SCHOOLS' BRIEF IN SUPPORT OF
MOTION TO STRIKE JURY DEMAND**

DANIEL BARTELS,

BRIAN ROBESON,

JOE DOE and JANE DOE, Real Names
Unknown,

Defendants.

I. INTRODUCTION

Plaintiffs KD and JD, Natural Guardians and Next Friends of LD ("Plaintiffs") sued Defendant Douglas County Public School District No. 001, a/k/a Omaha Public Schools ("OPS" or "Defendant"), in relevant part, under the Nebraska Political Subdivisions Tort Claims Act, Neb. Rev. Stat. § 13–901 et. seq. (Third Claim). (Filing No. 1). Plaintiffs also demanded trial by jury. *Id.* at ¶ 79. Pursuant to Fed. R. Civ. P. 12(f), the Court should strike Plaintiffs' jury demand with regard to their Third Claim because Plaintiffs are not entitled to a jury trial under the Nebraska Political Subdivisions Tort Claims Act.

II. ARGUMENT

Plaintiffs are not entitled to a jury trial because the State of Nebraska has not fully abrogated its sovereign immunity to permit jury trials against its political subdivisions. As a public school district, OPS is a political subdivision of the State of Nebraska. Neb. Rev. Stat. § 13-903(1). The Nebraska legislature has explicitly stated that plaintiffs are not entitled to a jury trial when bringing claims under the Political Subdivisions Tort Claims Act. See Neb. Rev. Stat. § 13–907 (“[A]ll suits brought under the Political Subdivisions Tort Claims Act...shall be heard and determined by the appropriate court **without a jury.**”) (emphasis added). Similarly, this Court has addressed the issue of a jury trial in such tort claims on numerous occasions and determined that a plaintiff cannot submit claims under the Nebraska Political Subdivisions Tort Claims Act to a jury, even where additional claims that are appropriate for the jury have been raised in the same lawsuit. See, e.g., *Villaneuva v. City of Scottsbluff*, No. 4:11-CV-3185, 2012 WL 45406, *1 (D. Neb. 2012) (striking jury demand as to tort claims against the city official in his official capacity); *Rohren v. Centennial Public School Dist. 67–R*, No. 4:07-CV-3150, 2007 WL 4118943, 1 (D. Neb. 2007) (same); *Harders v. Grand Island Public Schools*, No. 4:06-CV-3076, 2006 WL 2528524, *1 (D. Neb. 2006) (same). Thus, under both statutory law and case precedent, Plaintiffs cannot submit their tort claim against OPS to a jury.

III. CONCLUSION

For the foregoing reasons, OPS respectfully requests that the Court strike Plaintiffs' jury trial demand with respect to claims brought under the Nebraska Political Subdivisions Tort Claims Act (Third Claim), award Defendant its attorneys' fees and costs in bringing this Motion as well as any other relief the Court deems just and proper.

Dated this 17th day of August, 2018.

DOUGLAS COUNTY PUBLIC SCHOOL
DISTRICT NO. 001 a/k/a OMAHA PUBLIC
SCHOOLS, Defendant,

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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The undersigned further certifies that on this date a true and correct copy of the above and foregoing was served via regular U.S. mail on the following:

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